

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Local Telephone Competition and	)	WC Docket No. 04-141
Broadband Reporting	)	
	)	
Local Competition and Broadband	)	CC Docket No. 99-301
Reporting	)	

**COMMENTS OF EHOSTAR SATELLITE L.L.C.**

EchoStar Satellite L.L.C. (“EchoStar”) hereby submits its views in response to the Commission’s Notice of Proposed Rulemaking seeking comment on specific proposals to modify and extend its Form 477 local competition and broadband data gathering program.<sup>1</sup> EchoStar anticipates providing broadband service in the future and accordingly may become subject to the Commission’s Form 477 reporting requirements.

**I. INTRODUCTION AND SUMMARY**

EchoStar has long expressed concern about lagging deployment of cutting-edge services to rural and remote areas compared to the availability of such services in urban areas. While EchoStar agrees with the Commission that the Form 477 data gathering program has been a useful tool in helping “the Commission and the public [to] understand the extent of . . . broadband deployment, which is important to the nation’s economic, educational, and social well-being,”<sup>2</sup> EchoStar urges the Commission to proceed with the utmost caution in imposing

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<sup>1</sup> See *In the Matter of Local Telephone Competition and Broadband Reporting*, FCC 04-81, WC Docket No. 04-141, CC Docket No. 99-301, Notice of Proposed Rulemaking and Order on Reconsideration (rel. Apr. 16, 2004) (“NPRM”).

<sup>2</sup> *Id.*, ¶ 1.

additional data collection burdens on broadband providers. Responding to the Commission's reporting requirements is already a time-consuming process. The addition of more detailed reporting, as proposed by the Commission, will significantly increase the time it takes to complete the Form 477 – time that might be better spent working, for example, to improve the service quality of a company's broadband network. Moreover, much of the additional information the Commission proposes to require can now be obtained from industry analysts and investment banks that generate similar information, which calls into further question whether this added reporting burden should be imposed on broadband companies.

If the Commission ultimately decides to require broadband service providers to submit more granular data (*e.g.*, more detailed reporting about the deployment of technologies to serve mass-market broadband end users; more detailed tracking, over time, of marketplace adoption of increasingly fast broadband connections; and more detailed tracking of marketplace adoption of new broadband technologies), the Commission must remain receptive to requests for confidential treatment of the information submitted.<sup>3</sup> The Commission must also continue to ensure that reviewing parties cannot trace competitively sensitive data to any particular broadband service provider so that filers' willingness to respond is not undermined.

## **II. AN ALREADY SIGNIFICANT BURDEN WILL BE SUBSTANTIALLY INCREASED SHOULD THE COMMISSION REQUIRE FILERS TO PROVIDE MORE GRANULAR DATA REGARDING BROADBAND DEPLOYMENT**

In initially justifying the establishment of a program to collect information about the deployment of broadband services (along with the development of local telephone service competition), the Commission reasoned that collecting this information would “materially

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<sup>3</sup> See 47 C.F.R. § 0.459.

improve [its] ability to develop, evaluate, and revise policy in these rapidly changing areas and [] provide valuable benchmarks for Congress, this Commission, other policy makers, and consumers.”<sup>4</sup> While the Commission’s efforts to assess broadband availability may have been “substantially aided by analysis of the data collected by the Form 477 to date,”<sup>5</sup> the administrative and economic costs to businesses of providing this data have not been insignificant. These costs must be thoroughly reconsidered before imposing additional data collection requirements.

The Commission has estimated that it takes parties an average of 11 hours to complete the current version of FCC Form 477, making the obligation of filing Form 477 semi-annually a time-consuming task.<sup>6</sup> Moreover, as noted by the Commission, many companies are required to file multiple responses, thereby substantially increasing the estimated burden on such filers.<sup>7</sup> If filers are required to provide more granular data as the Commission proposes, filers can expect the time it takes to complete Form 477 to further increase.<sup>8</sup> The Commission must

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<sup>4</sup> See *Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd. 7717, 7718 (2000).

<sup>5</sup> See NPRM, ¶ 6.

<sup>6</sup> See Instructions for the Local Competition and Broadband Reporting Form, FCC Form 477, at 15 (“Form 477 Instructions”). The Commission’s estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, enter the data in a Form 477 spreadsheet, prepare a floppy diskette or compact disc (if the filer decides to submit completed Form 477(s) by a method other than e-mail), complete the certification form, and actually file the report. *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> In weighing the burden that the new reporting requirements would impose on filers, the Commission should also consider the fact that to adequately protect their competitively sensitive data, filers seeking confidential treatment must also take on the added burden of filing both a confidential and a redacted version of the Form 477. See Form 477 Instructions at 12.

carefully weigh these costs against the benefits of having the additional information it contemplates seeking. While the costs of compliance with Form 477 requirements are likely to increase exponentially, the benefits of having the additional information the Commission seeks – such as more detailed data about smaller entities operating in sparsely populated areas and data concerning the pervasiveness of broadband service in a particular locale – may be marginal in comparison to the cost. And the fact that similar details are already publicly available from industry analysts and investment banks that study broadband companies may tip the balance in favor of not imposing the additional reporting burden on broadband providers.

### **III. IF THE COMMISSION EXTENDS ITS FORM 477 REPORTING PROGRAM, IT MUST ENSURE THAT ANY INFORMATION IT PUBLISHES CANNOT BE TRACED TO SPECIFIC COMPANIES**

Because the number of entities providing satellite broadband service will likely remain small especially in comparison to the number of entities providing cable or DSL broadband service, information submitted by a satellite broadband provider will be more easily traceable to a particular service provider. Accordingly, it is critical that the confidentiality of the competitively sensitive data that must be reported by satellite broadband providers be protected. Such protection will be all the more important if the Commission decides to require broadband service providers to submit more granular data. While the Commission has committed to continuing its practice of aggregating data in its publications to protect against release of competitively sensitive company-specific data,<sup>9</sup> EchoStar notes that where an item of aggregated data combines information from only a few filers, as could be the case for satellite broadband

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<sup>9</sup> See NPRM, ¶ 12 & n.25.

providers, aggregation alone may not be sufficient to protect the data. In such cases, use of asterisks to mask the data may be more appropriate.<sup>10</sup>

The Commission has also requested comment on whether it should modify its policies concerning the length of time competitively sensitive data is kept confidential, suggesting that the data may cease to be sensitive after the passage of time.<sup>11</sup> The Commission accordingly asks whether such data may be publicly released after two years.

There is little question that the types of information submitted on a Form 477 and the additional information the Commission proposes to seek (*e.g.*, specific locations and numbers of subscribers on a zip code-by-zip code basis) are competitively sensitive data.<sup>12</sup> In EchoStar's view, data of this nature may remain competitively-sensitive for far longer than the two years at which the Commission proposes to cap its protection.<sup>13</sup> But clearly, such an assessment depends in part upon the individual circumstances, and cannot appropriately be the subject of a blanket time limit on protection.<sup>14</sup> The Commission should not adopt such a limit.

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<sup>10</sup> See *id.* at 7, n.26 (discussing the Commission's use of asterisks to mask certain data).

<sup>11</sup> *Id.* at ¶ 12.

<sup>12</sup> See *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

<sup>13</sup> The Commission suggests that it might be difficult to "back out" company specific data from the aggregated information it proposes to release in the absence of "reliable outside information," which the Commission believes will minimize the risk of competitive harm to filers. But where there are only a few filers in a particular category, the risk that a reviewing party could "back out" a specific filer's information cannot be easily dismissed. If a reviewing party is attempting to back out the information of a direct competitor, it already has one big piece of the puzzle at its disposal – its own data. Where, for example, there are only two competitors in a category, the reviewing party only needs a calculator to discover the detailed, highly sensitive subscriber data its competitor has reported on the Form 477. The Commission accordingly should not assume that data aggregation will preserve confidentiality in all instances.

<sup>14</sup> See *id.*, ¶ 12.

#### IV. CONCLUSION

The Commission should proceed with the utmost caution in imposing additional data collection burdens on broadband providers, weighing the potential benefits against the significant additional burden that would be imposed on reporting parties. And because the Commission proposes to collect even more detailed information from broadband service providers, the Commission must act to ensure the continued confidential treatment of the information, with particular attention to preventing the release of company-specific competitively sensitive data in the material the Commission publishes.

Respectfully submitted,

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